

1 IN THE UNITED STATES BANKRUPTCY COURT

2 FOR THE SOUTHERN DISTRICT OF TEXAS

3 HOUSTON DIVISION

4 IN RE: § CASE NO. 21-30923-11  
5 GRIDDY ENERGY, LLC, § HOUSTON, TEXAS  
6 DEBTOR. § WEDNESDAY,  
§ JULY 7, 2021  
§ 3:02 P.M. TO 4:59 P.M.

7 CONFIRMATION HEARING (VIA ZOOM)

8 BEFORE THE HONORABLE MARVIN ISGUR  
9 UNITED STATES BANKRUPTCY JUDGE

10  
11  
12 APPEARANCES: SEE NEXT PAGE

13 COURTROOM DEPUTY: TYLER LAWS

14 (Recorded via CourtSpeak; No log notes)

15  
16  
17  
18  
19  
20 TRANSCRIPTION SERVICE BY:

21 JUDICIAL TRANSCRIBERS OF TEXAS, LLC  
22 935 Eldridge Road, #144  
23 Sugar Land, TX 77478  
281-277-5325  
www.judicialtranscribers.com

24 Proceedings recorded by electronic sound recording;  
25 transcript produced by transcription service.

APPEARANCES (VIA ZOOM) :

FOR THE DEBTOR:

BAKER BOTTS, LLP  
Robin Spigel  
30 Rockefeller Plaza  
New York, NY 10112

BAKER BOTTS, LLP  
John Lawrence  
2001 Ross Avenue, Ste. 900  
Dallas, TX 75201

FOR OFFICIAL COMMITTEE OF  
UNSECURED CREDITORS:

MCDERMOTT WILL & EMERY, LLP  
Charles Gibbs  
2501 N. Harwood St., Ste. 1900  
Dallas, TX 75201

FOR PUBLIC UTILITY  
COMMISSION OF TEXAS:

ATTORNEY GENERAL OF TEXAS  
Jason Binford  
300 W. 15th St., Mail MC-008  
Austin, TX 78701

FOR STATE OF TEXAS:

ATTORNEY GENERAL OF TEXAS  
Abigail R. Ryan  
P. O. Box 12548  
Austin, TX 78711-2548

FOR US TRUSTEE:

OFFICE OF THE US TRUSTEE  
Jana Smith Whitworth  
515 Rusk St., Suite 3516  
Houston, TX 77002

FOR ERCOT:

MUNSCH HARDT KOPF & HARR, PC  
Kevin Lippman  
500 N. Akard St., Ste. 3800  
Dallas, TX 75201

FOR KAREN PRESCOTT:

FOX ROTHSCHILD LLP  
Trey Monsour  
2843 Rusk Street  
Houston, TX 77003

(Please also see Electronic Appearances.)

INDEXEXHIBITS:OfferedReceivedDEBTOR'S:

Ex. 312

36

36

Ex. 338-2

6

7

Ex. 345

36

36

Ex. 355

36

36

Ex. 363

33

33

Ex. 367

33

33

Ex. 370

33

33

1           HOUSTON, TEXAS; WEDNESDAY, JULY 7, 2021; 3:02 P.M.

2           THE COURT: All right. Good afternoon. We're  
3 here this afternoon in the Griddy Energy case. It's 21-  
4 -30923. We have electronic appearances that have been made  
5 so what I would like to do is to go directly to Debtor's  
6 counsel, ask you to press five, star on your phone, and let  
7 me ask you where you intend to go today. You can then make  
8 an opening statement. And if anyone else wishes to make an  
9 opening statement, they may do so as well.

10           MS. SPIGEL: Good afternoon.

11           THE COURT: Ms. Spigel, good afternoon to you.

12           MS. SPIGEL: Thank you, Your Honor, Robin Spigel,  
13 Baker Botts, counsel to the Debtor. With me in the virtual  
14 courtroom is Michael Fallquist, the Debtor's Chief Executive  
15 Officer; Roop Bhullar, the Debtor's Chief Financial Officer;  
16 and Tony Spencer, the Debtor's retained expert.

17           There are three items on the agenda today.  
18 There's a motion to approve settlement between the Debtor  
19 and the State of Texas, a motion to seal certain customer  
20 data in connection with the expert report filed by the  
21 Debtor, and the combined hearing on the confirmation of  
22 Griddy's Chapter 11 plan, as well as final approval of the  
23 disclosure statement.

24           As I reported last week, Your Honor, the plan was  
25 overwhelmingly accepted by voting classes, and no formal

1 objections to the plan or the disclosure statement were  
2 filed. There were a few informal comments to the plan that  
3 were received and is reflected and the resolutions that are  
4 reflected in the confirmation order. And we can go over  
5 that in a little bit.

6 I thought that it made sense to go -- proceed  
7 first with the motion to approve the settlement between the  
8 Debtor and the State of Texas.

9 THE COURT: So let me see if anyone has any sort  
10 of comment about proceeding that way. I actually -- the  
11 reason I didn't deal with that on the certificate of no  
12 objection was only because I thought it was so tied to  
13 whether we were going to confirm the plan that that should  
14 largely be a joint decision. If you think I should take  
15 them up separately, you know, given where the world is where  
16 we're here on pretty well an unopposed day, I don't know  
17 that it's going to matter a lot. But that's the reason I  
18 didn't was to believing that they were pretty well  
19 integrated. Even if you read the settlement it says that  
20 parts of it only come about if we confirm a plan. So if  
21 anyone else wishes to address the Court on that issue,  
22 please press five, star. Otherwise we can go there as a  
23 starting point. Let me see if I have it.

24 (No audible response)

25 All right. No one else seems to want to run

1 interference against you so why don't you move ahead,  
2 Ms. Spigel, with -- we'll go that way.

3 MS. SPIGEL: Thank you, Your Honor. And they are  
4 integrally tied. In fact, and I'll get to that in a second,  
5 but the settlement is dependent on the plan going effective,  
6 and part of the settlement is integrated in the plan. So it  
7 is subject to -- even if Your Honor approves it, it's  
8 subject ultimately to confirmation and then the plan going  
9 effective. But I will go through it.

10 The Debtor's motion to approve the settlement  
11 between the Debtor and its parent company, Griddy Holdings,  
12 LLC, and the State of Texas was filed at Docket Number 338.  
13 As the Debtor previewed at the hearing on conditional  
14 approval of disclosure statement, the Debtor had reached a  
15 settlement agreement with it and its parent company on the  
16 one hand, with the State of Texas on the other hand. The  
17 settlement agreement is attached to the proposed order  
18 approving the motion as Exhibit 1. And next to the  
19 settlement agreement is a copy of a consent judgment that  
20 I'll explain shortly.

21 The certificate of service respecting the service  
22 of the motion can be found at Docket 343.

23 As a preliminary matter, Your Honor, the Debtor  
24 would like to at this time move to admit the Fallquist  
25 declaration in support of the motion is attached as

1 Exhibit B to the motion at Docket Number 338-2.

2 Mr. Fallquist is on the line and available for cross  
3 examination.

4 THE COURT: All right. Is there any objection to  
5 the admission of 338-2, which is Mr. Fallquist's  
6 declaration?

7 (No audible response)

8 All right. Mr. Fallquist's declaration is  
9 admitted.

10 (Debtor's Exhibit Number 338-2 was received in  
11 evidence)

12 MS. SPIGEL: Thank you, Your Honor. There were no  
13 objections filed to the motion. A certificate of no  
14 objection had been filed on July 1st at Docket Number 364.  
15 And then we actually filed an amended certificate of no  
16 objection on July 2nd to fix some signature pages to the  
17 consent judgment just due to personnel changes. That's at  
18 Docket Number 369. Unless you have any questions that  
19 concerns the substance of the motion.

20 THE COURT: No. Let me hear if there's anyone  
21 that believes that this settlement is not appropriate or  
22 should not be granted.

23 (No audible response)

24 Mr. Gibbs, I know that you filed a statement in  
25 support of the plan and I think it incorporates your

1 client's support of this settlement. I just want to be sure  
2 that I'm reading that correctly and I'm not making a mistake  
3 about that. And I also know Mr. Binford has said he wants  
4 to speak. So let me get the two of your lines active, and  
5 then anyone else. Mr. Gibbs.

6 MR. GIBBS: Good afternoon, Your Honor, Chuck  
7 Gibbs with the law firm of McDermott, Will, and Emery.  
8 We're counsel for the Official Unsecured Creditors  
9 Committee. We support the entry of an order approving this  
10 settlement. As Your Honor correctly indicated, we filed a  
11 general statement in support of confirmation of the plan  
12 which necessarily also supports the approval of this  
13 compromise with the Attorney General. That was filed  
14 yesterday at Docket 382 so I just wanted the Court and the  
15 record to reflect that we are supportive of this motion. I  
16 think it's entirely appropriate and obviously critical  
17 component of the plan that you're about to hear.

18 THE COURT: All right. Let me hear from  
19 Mr. Binford.

20 MR. BINFORD: Good afternoon, Your Honor, Jason  
21 Binford with the Office of the Texas Attorney General. Just  
22 wanted to say that normally I appear in this Court on behalf  
23 of the State of Texas. Today I'm appearing on behalf of the  
24 Public Utility Commission of Texas, and that's an important  
25 distinction for these purposes. Ms. Ryan and Ms. Obaldo are



1 on the line for the State of Texas relating to the  
2 settlement agreement. I just wanted to say on the record  
3 that the State of Texas, as it's defined in this settlement  
4 agreement, does not include the Public Utility Commission of  
5 Texas. It's a separate entity for these purposes. Just  
6 wanted to put that on the record.

7 THE COURT: And does the PUC, who I understand is  
8 not a settling party, have any objection to the settlement  
9 with the State of Texas?

10 MR. BINFORD: Absolutely not, Your Honor.

11 THE COURT: And does the Debtor want to proceed  
12 with the settlement knowing, if you didn't already, that the  
13 PUC does not consider itself part of the State for the  
14 purposes of this motion only? I assume otherwise it might.

15 MS. SPIGEL: Well, I guess I will say this, Your  
16 Honor. The settlement is with the State of Texas, and the  
17 releases are specific with respect to the Consumer  
18 Protection Division of Texas. So to the extent that I don't  
19 know the agencies well enough to know, you know, whether the  
20 PUCT could bring the same actions as the Consumer Protection  
21 Division of Texas could bring. But we would fully expect  
22 that the releases, as they're narrowly tailored, would be --  
23 would apply to the PUCT to the extent that it could bring  
24 the same types of claims as the Consumer Protection  
25 Division. My understanding that those claims are of course

1 limited to the deceptive Texas practices act and things like  
2 that. But, you know, --

3 THE COURT: So Ms. Ryan --

4 MS. SPIGEL: -- it's just not --

5 THE COURT: -- wants to talk. Maybe she can add  
6 some clarity to this for us. Ms. Ryan?

7 MS. RYAN: Well I certainly hope I can add some  
8 clarity, Your Honor. For the record it's Abigail Ryan with  
9 the Office of the Texas Attorney General representing the  
10 Office of the Texas Attorney General's Consumer Protection  
11 Division.

12 Your Honor, I echo what Ms. Spiegel says in that  
13 our settlement is between the Office of the Attorney  
14 General's Consumer Protection Division who has brought a  
15 case in State Court against Griddy alleging violations of  
16 the DTPA. And so it is narrowly tailored to exhibit the  
17 DTPA allegations that were brought or could have been  
18 brought in State Court or Bankruptcy Court. And so that's  
19 what our settlement covers, Your Honor.

20 We believe that it was truly an arm's length  
21 conduction. We fought hard to get the consumer protections  
22 that we needed in this consent judgment that Ms. Spiegel  
23 will go over in a moment. And the Debtor fought hard for  
24 the things they wanted as well. And I think that this  
25 settlement has really fulfilled the needs of the Consumer

1 Protection Division for the State of Texas and as well as  
2 balancing the needs of the bankrupt, Your Honor. So I hope  
3 that added some clarity to your --

4 THE COURT: Well maybe --

5 MS. RYAN: -- question. If not, we'll --

6 THE COURT: Take a look at -- the settlement is  
7 with Texas. It isn't with the CID. Paragraph six is called  
8 a "Release By Texas." And I need to know if we have  
9 confusion over what's going on. I need to be able to rule  
10 on it today and I don't want to leave the ambiguity in  
11 there. Because I'm looking at paragraph six, Texas releases  
12 everybody.

13 MS. RYAN: Yes, Your Honor. And I am scrolling  
14 through it. I thought I had this earmarked. We had put in  
15 here a definition defining what the State of Texas is;  
16 because, Your Honor, at this point we only represent the  
17 Consumer Protection Division of the State of Texas.  
18 Theoretically I couldn't release any claims TCQ may have,  
19 just as an example, it was none that I know of. And so the  
20 State of Texas is very broad. Let me flip through and see  
21 or if, Ms. Spigel, you remember where we put in this was  
22 limited to the Consumer Protection Division.

23 THE COURT: So --

24 MS. RYAN: I believe it is further down in  
25 paragraph six that State of Texas or Texas hereby fully

1 releases, waives, and discharge Defendants and their present  
2 and former officers, agents, so forth, so on, subject to the  
3 injunction in the consent judgment from any claims arising  
4 out of, related to, facts alleged in the action, which is  
5 defined as our State Court action, which was brought by the  
6 State of Texas Consumer Protection Division that could have  
7 been brought in State Court, Bankruptcy Court, or any court  
8 of competent jurisdiction by the Consumer Protection  
9 Division of the Texas Attorney General's Office. And so we  
10 thought, Your Honor, that that narrowed it to the Consumer  
11 Protection Division. If you would like further clarity I am  
12 open to putting further clarity in there.

13 THE COURT: So again I want to figure out what  
14 people are trying to say here. Let's assume the Consumer  
15 Protection Division has the right because of the Debtor's or  
16 its officers' conduct during the freeze -- and I'm not  
17 saying it did have the right -- to collect some sort of  
18 damages from them, money damages. And let's also assume  
19 that the PUC would have had the right to collect money  
20 damages from that same conduct. Are you telling me that  
21 this release would incorporate the CID's ability to collect  
22 money damages but not the PUC's ability to collect money  
23 damages --

24 MS. RYAN: Your Honor, --

25 THE COURT: -- out of the same offense?

1 MS. RYAN: -- I believe that it would not cut off  
2 the -- if the PUCT has the right to bring similar causes of  
3 action under a statute of theirs, it wouldn't cut off the  
4 PUCT's right to do that. It's the Consumer Protection  
5 Division through the Texas DTPA statute where they get their  
6 power to bring those actions. And it's my understanding  
7 that only the Consumer Protection Division of the Texas  
8 Attorney General's Office can bring certain DTPA claims as  
9 we did in State Court before this bankruptcy was filed and  
10 that those rights don't belong to another State agency.

11 THE COURT: So this --

12 MR. BINFORD: Your Honor, if I could add to that.

13 THE COURT: Yeah. Who was speaking there?

14 MR. BINFORD: This is Jason Binford on behalf of  
15 the PUCT.

16 THE COURT: Yeah. Go ahead, Mr. Binford.

17 MR. BINFORD: Your Honor, I'm really not trying to  
18 spring anything on anyone. I previewed this with Debtor's  
19 counsel and there's no laying behind the log here. I --

20 THE COURT: Mr. Binford, I think --

21 MR. BINFORD: If --

22 THE COURT: -- you've done the opposite of laying  
23 behind the log so please don't hear my comments differently.  
24 You said it right out front so there isn't laying behind the  
25 log. I just -- I need to know what I'm being asked to

1 approve.

2 MR. BINFORD: Well, I'll -- I agree with Ms. Ryan  
3 that the DTPA is not really a creature of the PUCT. My  
4 charge this afternoon is to keep the PUCT's powder dry and  
5 reserve all rights for future actions that are brought  
6 against the PUCT and so that no one can make an argument  
7 that we can't make -- defend ourselves adequately or make  
8 counterclaims related to those. And those seem to be a  
9 different ballpark than what's before the Court right now.

10 THE COURT: Ms. Spigel, what did you think you  
11 were buying? So are you buying what they're selling or --

12 MS. SPIGEL: So the underlying action is brought  
13 by the State of Texas, right? I mean, that is who the  
14 Plaintiff is. That's why the settlement is with the State  
15 of Texas. So the releases that were negotiated heavily  
16 relate to the facts alleged in the action and anything that  
17 could be brought, claims that could be brought by the  
18 Consumer Protection Division of Texas.

19 I don't -- as I said before, if the PUCT can't  
20 bring the same actions that the Consumer Protection Division  
21 of Texas can, then we have no problem with that. We  
22 understand that what the releases say. But I don't know  
23 enough about the agencies to know who can assert what. We  
24 certainly don't expect another agency of the State of Texas  
25 to be able to bring same or similar claims that are being

1 released pursuant to the settlement.

2 THE COURT: So I don't hear Mr. Binford telling  
3 you that he is in agreement with that statement. You're  
4 both telling me, I think, that you don't know if there are  
5 overlapping claims and that I am not sure there is a meeting  
6 of the minds here and want -- I want to be sure there is.  
7 If it's arising out of the same conduct on the same day,  
8 there's no question in my mind but that if the PUC has a  
9 regulatory interest, that you're not releasing a regulatory  
10 interest. But what if it is a money damages interest? And  
11 I think both of you all are telling me you don't know if  
12 there is a money damages claim here let's say against an  
13 officer or the company. If you don't know if that's being  
14 released then I don't know what I'm signing. And I want to  
15 know what you all are intending to do.

16 MS. RYAN: Your Honor, if I may speak. This is  
17 Mrs. Ryan with the Attorney General's Office. I think that  
18 maybe I have a forest for the trees problem here. Being in  
19 the State of Texas and working as an assistant attorney  
20 general, I work for many different State agencies as you can  
21 imagine. And so when I define the State of Texas it's a  
22 pretty large definition because we have many, many State  
23 agencies. In this case, however, the State Court case,  
24 which is being settled, was brought by the State of Texas by  
25 and through the Consumer Protection Division of the Attorney

1 General's Office. And so it was narrowed down to just the  
2 Consumer Protection Division. It wasn't all the myriad  
3 State agencies.

4 And so what we were trying to get at in the  
5 settlement is we're settling the DTPA claims that we raised  
6 in the State Court suit through our Consumer Protection  
7 Division. The PUC, as confirmed, does not have the right to  
8 bring DTPA claims and --

9 THE COURT: So this isn't anything that were or  
10 could have been brought in a Texas State Court by the  
11 Consumer Protection Division. What if what you could have  
12 brought is the same as what the PUC could bring? Texas is  
13 giving a release out of that. That's why I think there  
14 isn't a meeting of the mind. Now, maybe --

15 MS. RYAN: So I think --

16 THE COURT: -- the Debtor's willing to live  
17 without that meeting of the minds. I don't know. But I'm  
18 not sure that I am prepared to live with the ambiguity.

19 MS. RYAN: I appreciate that, Your Honor. And I  
20 think a clarifying point could be made to say if we need --  
21 well, if we need. Obviously we need to amend the documents  
22 we filed. We could say the State of Texas by and through  
23 the Texas Attorney General's Consumer Protection Division  
24 solely, and so it narrows it to only the Consumer Protection  
25 Division and only those DTPA claims that the Consumer



1 Protection Division as part of the Attorney General's office  
2 had the right to bring. There's no other State agency --

3 THE COURT: Yeah. I just don't know if that's  
4 what the Debtor thought they were getting. They may not be  
5 willing to use that. Maybe they are. If they are I can do  
6 that with the stroke of a typewriter.

7 MS. SPIGEL: I would -- I need to look at the  
8 complaint because I thought the complaint was not specific  
9 to the Consumer Protection Division. If it was, then it's  
10 probably fine. I mean, could we have a five -- I hate to do  
11 this in the middle, you know, we have a confirmation hearing  
12 we'd like to get through, but could I have a five-minute  
13 recess to look at the complaint and then to just talk to my  
14 client very quickly? Because --

15 THE COURT: Of course you can.

16 MS. SPIGEL: -- we don't want to put this off.

17 THE COURT: Of course you can. I just want to be  
18 sure that I know what I'm being asked to sign, and that  
19 needs to be that you and Ms. Ryan and Mr. Binford all agree  
20 on what the intent is of the document. And I don't know  
21 that I have a particular concern with one possibility, which  
22 is when's the proof of claim deadline for the PUC?

23 MS. SPIGEL: It's September 13th.

24 THE COURT: Can I ask Mr. Binford if the PUC has a  
25 non-regulatory claim, so a money claim, is it looking to

1 assert that solely for setoff rights or will it be looking  
2 if it has a money claim to be sharing in any distributions  
3 to the unsecured pool of creditors?

4 MR. BINFORD: Your Honor, the PUCT is not -- does  
5 not consider itself a creditor in this case. I don't see us  
6 filing a proof of claim, not only because we don't have a  
7 monetary interest but also because it's also my charge to  
8 not waive sovereign immunity if I can get away with it. And  
9 so we won't be filing a proof of claim in this case.

10 The main thing that I'm trying to maintain, and  
11 this is also through the opt-out that I made sure was in the  
12 version of the confirmation order that's been presented, is  
13 to keep all of my defensive arrows in my quiver if people  
14 come calling in the future. So that's really what I'm  
15 after, is ensuring that we can fully defend ourselves if  
16 some party in relation to this case post-confirmation comes  
17 calling.

18 THE COURT: That's very helpful, and I appreciate  
19 that clarification. It certainly would -- adding something  
20 to that effect is going to resolve my concern over leaving  
21 this as an open issue. It may or may not resolve  
22 Ms. Spigel's concern.

23 I will tell you that I think the sovereign  
24 immunity question may have been resolved in 1846 but I will  
25 let you speak to the founders about that question. We

1 aren't -- I'm not going to try and address it today.

2 How long do you want, Ms. Spigel? I'll give you  
3 as long as you want. Ms. Spigel, 1846 --

4 MS. SPIGEL: I think I --

5 THE COURT: -- is when the sovereign State of  
6 Texas, where I was born, gave up its sovereignty and became  
7 a state and became bound by the Constitution of the United  
8 States, for those of you that aren't from here. We've tried  
9 to make you welcome but that still doesn't make you a Texan,  
10 Ms. Spigel.

11 MS. SPIGEL: I think I'll become an honorary one.  
12 Thank you. I think I just need honestly maybe like five  
13 minutes --

14 THE COURT: Sure.

15 MS. SPIGEL: -- if you don't mind.

16 THE COURT: We'll come back --

17 MS. SPIGEL: Maybe we could go -- come back at  
18 4:30.

19 THE COURT: We'll come back at 3:30. And if you  
20 need more time, just let me know then.

21 MS. SPIGEL: Okay. Thank you, Your Honor.

22 THE COURT: Thank you.

23 (Recess taken from 3:25 p.m. to 3:31 p.m.)

24 THE COURT: Mr. Binford, it looks like that I made  
25 an error on that and Texas joined the Union on December 29th

1 of 1845. I think I was off by three days.

2 MR. BINFORD: I would say that I was going to  
3 correct Your Honor but I did not understand the distinction  
4 either.

5 MR. GIBBS: Your Honor, I wasn't born here but I  
6 had to help my kids with their homework and they had to  
7 Texas history in school so I might have been able to guess  
8 within five years.

9 THE COURT: Ms. Spigel, --

10 MS. SPIGEL: Your --

11 THE COURT: -- how are we?

12 MS. SPIGEL: Your Honor, can I have another five  
13 minutes? I apologize. Jason -- I just want to give Jason a  
14 call.

15 THE COURT: You don't need to apologize at all.  
16 Just, look, I should have said this at the beginning of the  
17 hearing, Ms. Spigel. You know, Texas had a disaster and it  
18 was a disaster for your company as well. It could have  
19 resulted in this case just itself being a ridiculous  
20 exercise in litigation and unnecessary fights. And what you  
21 all have come together to do is a really amazing  
22 accomplishment. You take as much time as you need. I'm not  
23 trying to rush you with these five-minute breaks. I'm  
24 trying to facilitate the good work you've been doing. So  
25 you tell me how long you want. It's just in these COVID

1 days, I've got to come back out because there's no one, you  
2 know, saying, okay, we're ready. So how much time do you  
3 want? I'll give you what you want.

4 MS. SPIGEL: Why don't we say 3:45? Just it  
5 hopefully will be done by then. I --

6 THE COURT: We'll see you then. Thank you.

7 MS. RYAN: Robin, --

8 MR. BINFORD: Your Honor, I'll just say,  
9 Ms. Spigel, I'm on my cellphone so why don't I give you a  
10 call? And actually we might set up a conference call and  
11 have Ms. Ryan on as well.

12 MS. RYAN: Yeah. I think I --

13 MR. BINFORD: I'll --

14 MS. RYAN: -- can have some clarity for you,  
15 Ms. Spigel.

16 MR. BINFORD: I'll email -- Ms. Spigel and  
17 Ms. Ryan, I will email you a conference line right at this  
18 very minute.

19 THE COURT: We're going to come back at five  
20 minutes until 4:00, so not at 3:45 like you asked for.

21 Okay. Thank you. Five until 4:00.

22 MS. SPIGEL: Thank you. Okay. Thank you.

23 (Recess taken from 3:33 p.m. to 3:54 p.m.)

24 AFTER RECESS

25 THE COURT: All right. Ms. Spigel, what did you

1 all figure out?

2 MS. SPIGEL: Your Honor, can you hear me?

3 THE COURT: I can. Thank you.

4 MS. SPIGEL: Okay. Thank you. I think Ms. Ryan  
5 will put a statement on the record but I think there has  
6 been a meeting of the minds, and with her statement that  
7 will clarify what's intended by the releases and how they  
8 work.

9 THE COURT: Perfect. Thank you. Ms. Ryan, let me  
10 see if I need to get your line active again. Ms. Ryan and  
11 Mr. Binford, I've got you all back on the line again.

12 MS. RYAN: Thank you, Your Honor. Can you hear  
13 me?

14 THE COURT: I can. Thank you, Ms. Ryan.

15 MS. RYAN: Okay. So we do have a meeting of the  
16 minds. Thank you for that short break so that we could all  
17 be on the same page.

18 So to start with, the Consumer Protection Division  
19 has power to bring certain claims under Texas DTPA and other  
20 statutes. And these powers only belong to the State of  
21 Texas' Consumer Protection Division. No State agency can  
22 bring these claims.

23 And these aren't for damages. Generally these are  
24 for injunctive relief, they are for restitution, and they're  
25 for civil fines and penalties.

1           Here, Your Honor, the claims that the State of  
2 Texas is settling are only the claims that were brought or  
3 could have been brought by the Attorney General's Consumer  
4 Protection Division. This doesn't affect any claims or  
5 causes of action that any State agency, including the PUCT,  
6 may have. It's clearly just the Consumer Protection  
7 Division's claims or causes of action that were brought or  
8 could have been brought by the State of Texas.

9           THE COURT: All right.

10           MS. SPIGEL: And, Your Honor, as we understand it,  
11 that there is the PUCT does not or has its own set of claims  
12 and causes of actions that it can bring against different  
13 parties but they don't overlap with the Consumer Protection  
14 Division. And so there is -- there would be no concern with  
15 the language that is in the release because the PUCT  
16 couldn't bring those types of claims that the Consumer  
17 Protection Division can bring.

18           MS. RYAN: That's exactly right, Your Honor. I  
19 agree exactly what Ms. Spigel said. And if you do need more  
20 elaboration on these powers and why they don't extend to  
21 State agencies, I have the head of the Attorney General's  
22 Consumer Protection Division on the line and on the video if  
23 you have questions for him.

24           THE COURT: So I have one question. And I'm not  
25 sure who you want to answer it so I'll leave that up to you.

1 I understand that there are powers for what you're telling  
2 me in the consumer division that others can't exercise. Are  
3 there any powers that the consumer division has that others  
4 can also exercise? So I --

5 MS. RYAN: Your Honor, if you'll unmute --

6 THE COURT: So if I think of a Venn diagram, you  
7 know, I'm trying to figure out what's the overlap on the  
8 Venn diagram, if you will talk to me in math terms.

9 MS. RYAN: Absolutely. And it's funny because  
10 that's exactly how Ms. Spiegel and I were talking about  
11 this. And there is no overlap, Your Honor, --

12 THE COURT: And that --

13 MS. RYAN: -- in our presentation.

14 THE COURT: -- answers the question. If there's  
15 none then there's none. That means I understand exactly  
16 what's written based on the parties' statements. All right.  
17 Sorry about -- I'm sorry. But, look, it's really important  
18 to me that I enforce my orders. And I've learned don't sign  
19 something that you don't understand what it means because  
20 then when it comes time to enforce it you've got a real  
21 problem. And people rely on me to enforce the orders.  
22 That's why I'm trying to ask these questions. You all have  
23 answered them. I'm satisfied with the answers, I'm  
24 satisfied that the document now -- or always made sense. It  
25 was my lack of knowledge that made me question whether there



1 was a problem. And I don't think there is.

2 So with that said, we have the evidence in the  
3 record. I don't believe anyone is objecting. But let me  
4 hear if anyone wishes to object to the order that was filed  
5 at 369. I'm going to look through it and thumb through it a  
6 little bit but please press five, star and let me know.

7 MR. GIBBS: Your Honor, can you hear me? This is  
8 Chuck Gibbs.

9 THE COURT: Mr. Gibbs, I can hear you fine.

10 MR. GIBBS: Thank you. We are supportive of the  
11 entry of the order. I just need to get one clarification as  
12 you -- are the comments of counsel for the PUCT part of the  
13 record that Your Honor is relying upon in approving this  
14 order? Because I understood them to say it's not their  
15 intention to be filing a proof of claim in this case, that  
16 their reservation of rights today, which I understood them  
17 to -- and why they were making it was to retain, as counsel  
18 indicated, their defensive arrows in their quiver. But we  
19 wanted it to be clear that if they're reserving -- making it  
20 clear they're not a party to settlement that they're not  
21 later going to be -- for a distribution that my constituency  
22 is expected to give in this case.

23 THE COURT: That is what they told me. I will  
24 rely on that when we get to the confirmation hearing in  
25 determining whether I believe that the plan meets all the

1 requirements of 1129. I've known Mr. Binford for a while  
2 and he's a man of his word.

3 MR. GIBBS: As have I and I agree.

4 THE COURT: Thank you. Are you going to ask me to  
5 waive the 14-day stay on the plan?

6 MS. SPIGEL: Yes, Your Honor.

7 THE COURT: Tell me why we're -- you're seeking to  
8 do that.

9 MS. SPIGEL: We don't think that there's any  
10 conditions that require the plan, you know, to -- for there  
11 to be a final and non-appealable order. We think that  
12 there's been no opposition and we would like for the plan  
13 and the settlement to go effective as soon as possible.

14 THE COURT: I don't think that's a valid reason  
15 under the rules to have cause to waive the stay so I'm going  
16 to take out paragraph two. I got it, that no one ever wants  
17 it there if you're going to win, right? But it's a valuable  
18 appellate right and we ought to have a good reason for  
19 removing it. No one has objected. I don't anticipate any  
20 appeal. But as has already been proven twice today, I can  
21 make mistakes in what I do. So I want to leave that here.

22 The draft has all the attachments to it. I'm  
23 signing the order right now. And if you'll give me one  
24 second, I'm going to get it sent to docketing. All right.  
25 It'll be docketed in just a few minutes. Where did you want

1 to go now, Ms. Spigel?

2 MS. SPIGEL: Thank you, Your Honor. I appreciate  
3 it. Next I'd like to move to the motion to seal, which I'm  
4 going to defer to my colleague John Lawrence.

5 THE COURT: All right. Thank you. Mr. Lawrence,  
6 I see you. It's just taking me a minute to get it clicked.  
7 Good afternoon, Mr. Lawrence.

8 MR. LAWRENCE: Good afternoon, Your Honor, John  
9 Lawrence from Baker Botts on behalf of the Debtor.

10 Your Honor, at Docket 368, Debtor filed a motion  
11 to seal an exhibit that was attached to the expert report of  
12 Mr. Spencer. The only piece of that report that the Debtor  
13 seeks to seal is that one exhibit because it contains  
14 customer information. While it doesn't include names of  
15 customers or addresses or customer ID numbers, there is, as  
16 Your Honor knows from being able view it, separate rows for  
17 each customer and amounts paid and amounts owed by  
18 customers. And, Your Honor, because both the PUCT rules and  
19 the Griddy terms of service forbid Griddy from disclosing  
20 proprietary customer information, including identifying  
21 information that might show historical usage, the Debtor  
22 believes that caution is warranted here in sealing this  
23 information.

24 While we believe it would be very difficult and  
25 unlikely that somebody could use this information to

1 identify specific customers, the risk of doing so here  
2 pushes the balance against the report itself which relies on  
3 the information is fully public. And the spreadsheet does  
4 not, other than to someone, who's an expert like  
5 Mr. Spencer, does not really inform the understanding of the  
6 report warrant caution here and for that reason, out of an  
7 abundance of caution, the Debtor would like to seal this  
8 exhibit so that it is not publicly viewable.

9 THE COURT: All right. Is there -- I do have one  
10 person that wants to address the sealing question. See if I  
11 have -- Ms. Whitworth, good afternoon to you.

12 MS. WHITWORTH: Good afternoon, Judge Isgur. Jana  
13 Whitworth on behalf of the United States Trustee. Your  
14 Honor, I just wanted to let the Court know and we have  
15 discussed this via email with the Debtor's counsel. It  
16 appears to the United States Trustee that the information is  
17 -- that they're seeking to seal already has been redacted.  
18 All of the personally identifiable information has been  
19 redacted. And as we've made clear in prior hearings, our  
20 preference is to continue redaction rather than in sealing  
21 information. And I just wanted to let the Court know that  
22 the Trustee's position is that an already redacted report  
23 really should not be sealed. That's it, Judge. I just  
24 wanted to let the Court know that we have reviewed that and  
25 that's our position.

1 THE COURT: So why do we need to deal with this  
2 document at all? I mean, I'm not going to use it. No one's  
3 going to use it. It's unopposed.

4 I have the report by Mr. Spencer, presumably he's  
5 going to testify today. Is there a reason why it needs --

6 MR. LAWRENCE: Your Honor, we --

7 THE COURT: -- to be part of the record, why the  
8 attachments need to be part of the record?

9 MR. LAWRENCE: Your Honor, that is another  
10 solution that is available. We did attach it because it's  
11 something he relied on so that it's something that the Court  
12 or others who are reviewing the report for the purposes of  
13 any sort of examination could view and test. But it is --  
14 as Your Honor has noted, it is not the sort of information  
15 that I think that any reader of the report needs in order to  
16 understand the report. So if Your Honor would prefer that  
17 we simply unfile that exhibit and still have it as something  
18 listed that he relied on but not have it as part of the  
19 record before the Court, that is also a resolution.

20 THE COURT: Ms. Whitworth, does that work for your  
21 client?

22 MS. WHITWORTH: Yes, Judge. It sure does.

23 THE COURT: Does anyone object to the withdrawal  
24 of Exhibit 1 to the Spencer report from the record  
25 altogether?

1 (No audible response)

2 Going to show that Exhibit 1 is withdrawn from the  
3 Court's record. Mr. Lawrence, that's without prejudice so  
4 if it turns out you get a surprise objection, you want to  
5 come back with it, we'll deal with this then. But I just  
6 think it's a matter not worth spending a whole lot of brain  
7 damage on given -- you're right. I've had the opportunity  
8 to look at it. And you're wrong if you think I've read the  
9 whole thing. I don't think he's read the whole thing in  
10 terms of every line. It's just the summary data. All  
11 right. It's withdrawn from the record. The motion to seal  
12 is now moot and we'll take no action on it.

13 All right. We're back to you, Ms. Spigel.

14 MR. LAWRENCE: Thank you, your -- thank you very  
15 much. The next item on the agenda is the final approval of  
16 the disclosure statement and confirmation of the plan. As I  
17 said on the first day of this case, the Chapter 11 plan  
18 proposed by the Debtor is unique. The winter storm event  
19 and extreme pricing destroyed Griddy's business and  
20 customers didn't pay their bills and ERCOT mass transitioned  
21 Griddy's customers to providers of last resort. Until the  
22 winter storm -- sometime during the winter storm, Griddy was  
23 solvent. And as I've mentioned before, Griddy's management  
24 actually took the unusual steps to try to get customers off  
25 its platform. But not all were able to do so.

1           So Griddy ended up filing this case as a  
2 liquidating 11 to try to do the right thing by all parties,  
3 including customers, since from our perspective the  
4 legislature and regulators haven't been able to provide that  
5 relief.

6           And the Debtor has worked very hard with many  
7 different parties, including the Committee, the Debtor's  
8 prepetition lenders, its non-debtor affiliates, and the  
9 State of Texas to make this plan in its current form work.  
10 I think everyone wants to see relief for the customers that  
11 want it, which is why people have been willing to provide  
12 substantial contributions and concessions in this case.

13           The Debtor, and with the overwhelming support of  
14 creditors and parties in interest, believe that maximizing  
15 value can also include providing relief for customers. And  
16 that's what the plan does. As I've noted several times I  
17 think, the plan has been overwhelmingly accepted by all the  
18 classes entitled to vote on the plan.

19           On May 26th, the Court entered an order  
20 conditionally approving the disclosure statements. That was  
21 at Docket Number 308. And solicitation commenced on the  
22 plan on May 28th.

23           June 25th was the deadline to object to final  
24 approval of the disclosure statement and confirmation of the  
25 plan. That was also the deadline to vote on the plan.

1           In accordance with the combined hearing order, the  
2 Debtor provided extensive notice of today's hearing.  
3 Specifically, written notice was provided to the United  
4 States Trustee for Region Seven, all impaired classes of  
5 claims and interest entitled to vote on the plan, counsel to  
6 the Committee, counsel to the State of Texas, all parties  
7 holding claims against the Debtor that's listed on the  
8 creditor matrix, including parties that have -- that filed  
9 prepetition actions against the Debtor. All parties have  
10 filed a notice of appearance in the case, the IRS, and all  
11 parties to the Debtor's executory contracts.

12           The Debtor also published notice of the combined  
13 hearing in the *The New York Times*, the national edition, the  
14 *Dallas Morning News*, and the *Houston Chronicle*. Appropriate  
15 affidavits of mailing and publication have been filed with  
16 the Court.

17           The following declarations have also been filed  
18 with the Court: the declaration of Angela Tsai of Stretto  
19 regarding solicitation of votes and tabulation of ballots,  
20 which was filed with the Court on July 1st, that's at Docket  
21 Number 363; the declaration of Roop Bhullar, the Debtor's  
22 Chief Financial Officer, was filed on July 2nd in support  
23 of, among other things, confirmation of the plan, and sets  
24 forth the basic factual predicates in support of the plan,  
25 that's at Docket Number 370. In addition, the Debtor filed



1 the export report and declaration of Tony W. Spencer, which  
2 was filed in support of confirmation and, in particular, the  
3 proposed customer releases. That's at Docket Number 367.  
4 Each of the declarants is on the phone and available for  
5 cross examination with respect to the items set forth in  
6 their respective declarations. And unless there's any  
7 objections, we would move at this time to admit each of  
8 those declarations into evidence at the hearing.

9 THE COURT: Is there any objection to the  
10 admission of the declarations identified by Ms. Spigel?

11 (No audible response)

12 They are --

13 MR. SPEAKER: No, Your Honor.

14 THE COURT: -- each identified. Excuse me, they  
15 are each admitted.

16 (Debtor's Exhibits Numbers 363, 367, and 370 were  
17 received in evidence)

18 Is there any party that wishes to cross examine  
19 any of the declarants? I do have someone. Hold on.  
20 Mr. Lippman, and if this is an objection to admission of the  
21 declarations you're not too late for that either. So tell  
22 me what you got.

23 MR. LIPPMAN: Thank you, Your Honor. I just want  
24 to speak just briefly with respect to the expert report of  
25 Mr. Spencer. ERCOT doesn't oppose or otherwise take issue

1 with the opinions expressed by Mr. Spencer as expressed in  
2 the report. But Mr. Spencer's opinions are based in part on  
3 the declaration of Michael Fallquist in support of the  
4 Chapter 11 petition and first day pleadings, which is at  
5 Docket Number 21. As the Court may recall at the first day  
6 hearing, I expressed some concerns about the accuracy of  
7 some of those statements contained in the declaration.  
8 ERCOT doesn't oppose the admission of Mr. Spencer's report  
9 to the extent the Court's not making any findings on the  
10 validity of the statement made by Mr. Fallquist in his  
11 declaration.

12 THE COURT: Ms. Spigel, are you asking me by  
13 admitting and relying on Mr. Spencer's report that I would  
14 also be relying on the Fallquist statements as being  
15 truthful and accurate?

16 MS. SPIGEL: No, Your Honor. They -- no, Your  
17 Honor. Those -- the expert did rely on those in making his  
18 conclusion but we're not asking Your Honor to admit the  
19 Fallquist declaration into evidence --

20 THE COURT: All right.

21 MS. SPIGEL: -- in connection with this hearing.

22 THE COURT: It's my understanding of an expert  
23 report in the current state of the law that an expert can  
24 rely on hearsay to come to conclusions but that the hearsay  
25 itself does not come in as admitted or as statements of

1 fact. It's simply something that an expert can rely on. So  
2 I will honor Mr. Lippman's request and not consider  
3 independently the Fallquist statements and not admit the  
4 Fallquist statements for the purpose of today's hearing. I  
5 think that's what you're asking for, Mr. Lippman. I just  
6 want to be sure.

7 MR. LIPPMAN: I am, Your Honor. Thank you very  
8 much.

9 THE COURT: Thank you. All right. Does anyone  
10 now have any cross-examination for any of the declarants?

11 (No audible response)

12 All right. Ms. Spigel. You've got everybody  
13 under control --

14 MS. SPIGEL: Thank you.

15 THE COURT: -- here, Ms. Spigel. Nobody's  
16 objecting to anything.

17 MS. SPIGEL: We worked very hard for that, Your  
18 Honor.

19 There's other documents we'd like to move into  
20 evidence. Would it be appropriate to do that now?

21 THE COURT: So far you're on a roll so you can  
22 give it a shot.

23 MS. SPIGEL: Okay. We would like to move into  
24 evidence the disclosure statement, which includes the  
25 liquidation analysis attached as Exhibit B. That's at

1 Docket Number 312.

2 THE COURT: Any objection to the admission of the  
3 disclosure statement?

4 (No audible response)

5 Disclosure statement is admitted.

6 (Debtor's Exhibit Number 312 was received in evidence)

7 MS. SPIGEL: Thank you. We'd also like to admit  
8 into evidence the plan supplements and the supplement to the  
9 plan supplement. So that's at Docket Number 345 and 355.  
10 There are separate documents. There's seven of them in  
11 Docket Number 345, which is the original plan supplement.  
12 Do you want me to read which documents they are?

13 THE COURT: Is there any objection to the  
14 admission of 345 or of 355?

15 (No audible response)

16 (Debtor's Exhibits 345 and 355 were received in  
17 evidence)

18 So I just want to make a brief comment on the  
19 record. I've known now Mr. Nelms for a large number of  
20 years. He served on the bankruptcy bench in the Northern  
21 District of Texas at the same time that I served on the  
22 bankruptcy bench here. I hold him in high regard. That  
23 said, and I don't regard myself as -- we've never gone to  
24 dinner or anything like that. I think he's a good person.  
25 But we're not friends in the sense of being social friends.

1 We were business friends. I did not recommend him, and I  
2 think it would be inappropriate for me to be engaged in the  
3 retention of former colleagues because I have encouraged  
4 people to do that. I also don't think they are disqualified  
5 from serving merely because they are former colleagues. And  
6 I want the record clear that this was a selection that the  
7 parties made and not the Court. I have no problem with your  
8 selection. But I want to understand from you that you came  
9 across the concept of retaining former Judge Nelms with no  
10 input from the Court or any staff here or anything at all  
11 like that. And I just need you to confirm that. I think  
12 it's right. I know it's true about me but I -- you never  
13 know. So I want to be sure we didn't have anything to do  
14 with that.

15 MS. SPIGEL: That is correct, Your Honor.

16 THE COURT: All right.

17 MS. SPIGEL: We chose a -- we had to choose a  
18 mutually agreeable person between the Debtor and the  
19 Committee. And Judge Nelms was a natural choice to bridge  
20 the gap between the two.

21 THE COURT: All right. Again, I just wanted that  
22 clear on the record --

23 MR. GIBBS: Your Honor, --

24 THE COURT: -- because I think it's important we  
25 retain the level of independence and separation that is

1 appropriate for the work we do. Mr. Gibbs, go ahead.

2 MR. GIBBS: For the record again, Chuck Gibbs with  
3 McDermott, Will, and Emery, counsel for the Committee. I  
4 just wanted the record to be clear. Judge Nelms was  
5 actually the person that the Committee recommended and I  
6 wanted Your Honor to know and the record to reflect that  
7 that was through no input by you, Your Honor, or anyone from  
8 the Court. It was based on our independent evaluation of  
9 Judge Nelms and concurrence with your statement regarding  
10 his capabilities and integrity. And it was our  
11 recommendation and negotiation with the Debtor was agreed to  
12 by the Debtor.

13 THE COURT: Mr. Gibbs, I appreciate that. I just  
14 -- it matters to me that people understand how these things  
15 happen and that it's not -- he isn't picked because of me,  
16 he's picked because of you all. And that's what matters to  
17 me. Okay. Ms. Spigel.

18 MS. SPIGEL: Thank you, Your Honor. I just -- I  
19 also just want to note that the Debtor filed a brief in  
20 support of confirmation and the proposed order approving the  
21 disclosure statement confirming the plan on July 2nd at  
22 Docket Number 376 and 378.

23 THE COURT: So I've reviewed the brief in full. I  
24 have not reviewed the order yet. They usually change my now  
25 so I try and wait on that. But I read the brief. Thank

1 you.

2 MS. SPIGEL: Thank you, Your Honor. There have  
3 been no changes to the confirmation order since we filed it.

4 So the objection to the plan and disclosure  
5 statement were required to be filed by the 25th of June. As  
6 I noted earlier, the Debtor received a few informal comments  
7 with the plan, all of which I'm pleased to report were  
8 resolved consensually and reflected in paragraphs 30 through  
9 33 in the confirmation order. No formal objections were  
10 filed to the plan or the disclosure statement.

11 As Your Honor is aware, up until settlement with  
12 the Committee, the Committee spent substantial time seeking  
13 discovery and depositions from the Debtor. And although the  
14 depositions have been taken and extensive document requests  
15 have been provided, ultimately the Debtor and the Committee,  
16 the Debtor's prepetition lenders, and the Debtor's non-  
17 debtor affiliates came to a settlement agreement. And  
18 obviously I'll let Mr. Gibbs speak on behalf of the  
19 Committee but the Committee supports the plan.

20 If I may turn to approval of the disclosure  
21 statement on a final basis. As set forth in the Debtor's  
22 motion for approval of the disclosure statement, as well as  
23 the pleadings filed in support of the conditional approval  
24 of the disclosure statement and the Debtor's confirmation  
25 brief, the disclosure statement satisfies the requirements

1 in 1125. Each of those documents, as well as the records of  
2 the hearing on the conditional approval of the disclosure  
3 statement, highlights all of the types of information that  
4 was included in the disclosure statement. And we would  
5 respectfully submit that disclosure statement has the type  
6 of information necessary to allow holders to have made an  
7 informed judgment about the plan, and that the disclosure  
8 statement contains adequate information. There were no  
9 objections and we'd ask Your Honor to approve the disclosure  
10 statement on a final basis.

11 THE COURT: Thank you. Is there any other party  
12 that supports approval of the disclosure statement and  
13 confirmation of the plan that wishes to introduce any  
14 evidence in support?

15 (No audible response)

16 Is there any party that opposes either the  
17 approval of the disclosure statement or the confirmation of  
18 the plan that wishes to introduce any evidence against  
19 approval and confirmation?

20 (No audible response)

21 All right. I'm going to show that the evidentiary  
22 record is closed. This was such a difficult case. First  
23 I'll just start with the simple stuff, which is that on the  
24 disclosure statement we already conditionally approved it.  
25 I see no reason why we didn't get that right the first time.



1 And nobody's filed any new. I -- for the same reasons I  
2 conditionally approved it I'm going to finally approve it.  
3 It absolutely contains information to allow people to decide  
4 how to vote.

5 This is a very unique plan, as Ms. Spiegel has  
6 mentioned, because a lot of the focus of the plan is on the  
7 Debtor releasing claims against customers as a swap, for  
8 lack of a better word, to be sure that the customers don't  
9 assert claims against the Debtors without ever admitting  
10 that the customers have any valid claims against the  
11 Debtors, or vice versa. By and large, the voting reflects  
12 an overwhelming basis that the customers like that idea.  
13 You know, they voted, again overwhelmingly, that if Griddy  
14 had done anything wrong, that they were going to swap a  
15 release of whatever liability they may have on their unpaid  
16 electrical bill in exchange for that.

17 With respect to electric customers who already  
18 paid their bill, they're going to get an unsecured claim and  
19 there will be distributions in some amount made on that  
20 unsecured claim initially. Maybe not as much as what people  
21 hoped for but better than nothing. And to date I have not  
22 seen any claim against Griddy that it seems to me would  
23 justify anybody not being willing to take that deal. So I  
24 don't think that I've seen rights against Griddy that appear  
25 to me to be valuable.

1           Nevertheless, no one was forced to take this. If  
2 -- although the class had to accept as a class, every member  
3 of the class had an opt-out right. And a few people opted  
4 out and that's fine. They can, you know, have their perhaps  
5 large claim in the unsecured creditor pool and perhaps have  
6 somebody try and get them to pay their electric bill.  
7 That's their choice and I think the disclosure statement  
8 gave them a full opportunity to understand what they were  
9 doing.

10           With respect to other creditors, you know, this is  
11 a company that failed overnight. And other creditors in  
12 general were going to get extremely low returns under the  
13 liquidation test. And what this does is it provides a small  
14 recovery for other general unsecured creditors.

15           The secured creditors who have some crossover with  
16 formation and ownership it's my understanding are giving up  
17 a substantial amount of money to be sure that this whole  
18 situation works. And, again, I've seen no valid claim  
19 against them either.

20           So this situation, the freeze, the failure, from  
21 what I have seen to date was in no way Griddy's fault. The  
22 amount of the bills were enormous. But they were driven not  
23 by Griddy but by others. And I don't know how that imposes  
24 liability on Griddy either. So I think that this is the  
25 best outcome in a difficult world.

1 I've read the brief. For the reasons set forth in  
2 the brief, all the requirements of Section 1129(a) with  
3 respect to confirmation have been satisfied. And we're  
4 going to confirm the plan.

5 So I'd like to put your order up on the screen and  
6 let you watch me as I make minor edits, if anything, to it  
7 and see if anyone has any problem with that. Unless you  
8 need some additional findings I should ask. If you need any  
9 additional oral findings, I know that you'll have quite a  
10 few in the draft order.

11 MS. SPIGEL: I -- Your Honor, it's Robin Spigel.  
12 I do not but there is one paragraph in particular I want to  
13 make sure that I discuss with you because it's a -- is a new  
14 concept. It doesn't require re-solicitation, and I'll  
15 explain why, but I do want to make sure we get to that.  
16 It's paragraph 14 of the confirmation order, so when we get  
17 there I just want to talk.

18 THE COURT: Why don't we start there?

19 MS. SPIGEL: Okay. So paragraph 14, which is on  
20 page 18 of the proposed order, essentially it relates to  
21 customers being able to opt-in to the releases. So almost  
22 all of the 145 customers, former customers, that opted out  
23 of the releases and the third party releases in class four  
24 owe the Debtor money. And while it's certainly their right  
25 to have done so, the Debtor and the Committee were concerned

1 that many of those customers may have done so inadvertently.  
2 And as a result, we thought that it made sense and in spirit  
3 of the plan to have included the ability of those people to  
4 opt-in to the customer releases with the caveat that they  
5 wouldn't have automatically allowed claims if they file  
6 those claims for the amounts that they paid for electricity  
7 usage. And the reason why we cleaved it in that way is  
8 because then if they had those allowed claims that would  
9 have adversely affected the treatment of class four and  
10 five, and we did not want to resolicit the plan.

11 THE COURT: Let me hear from others but I just  
12 don't have a problem with including this. Effectively, a  
13 lot of this plan is to get rid of litigation fights. And if  
14 somebody decides they made a mistake and they want to do it,  
15 withdraw their opt-out, which eliminates another fight, this  
16 makes sense to me. So you're not going to get any objection  
17 from me to it. I don't think it's a material change. I  
18 don't think it adversely affects other parties. But if  
19 someone does have an objection to it, some sort of, you  
20 know, it's not fair that they get to come in late kind of  
21 thing, please voice your objection and we'll hear it. But  
22 you're not going to get one from me.

23 MS. SPIGEL: Thank you, Your Honor.

24 THE COURT: No one is wishing -- is asking to  
25 speak. Can you give me the ECF number to fill in right

1 here?

2 MS. SPIGEL: It is number 376.

3 THE COURT: Thank you. So the appearance of all  
4 interested parties having been made electronically, since we  
5 didn't take oral appearances I think.

6 MS. SPIGEL: Thank you.

7 (Pause)

8 MR. GIBBS: Your Honor, I don't have your proposed  
9 order you're working from on my screen. Maybe others do and  
10 maybe I'm just missing it.

11 THE COURT: You -- I apologize. Hold on. Try  
12 that again. Let me go back up and show you what I've  
13 changed. I haven't changed much.

14 MR. GIBBS: You're good.

15 THE COURT: You can see it now, right?

16 MR. GIBBS: Yes. Thank you.

17 THE COURT: Okay. I filled in the document number  
18 right there. I changed this from having taken judicial  
19 notice of all written and oral evidence to just say I've  
20 considered it all because some of it I don't think is  
21 capable of judicial notice. Does this affect the 14-day  
22 stay or is one of the conditions that this order be final?

23 (Pause)

24 MS. SPIGEL: I'm sorry. I was on mute. I  
25 apologize. It's Robin Spigel. Can you repeat the question?

1 THE COURT: Does 11.02 require that this order  
2 become final?

3 MS. SPIGEL: It does.

4 THE COURT: Thank you. So can I just tell you  
5 that administratively this paragraph is very difficult to  
6 administer? If -- let me give you an example. If somebody  
7 files a fee application five days after the effective date,  
8 my calendar is going to have that reviewed 26 days after the  
9 effective date. And we're giving people 65 days to object.  
10 Is there a reason why we can't give them 21 days after it's  
11 filed, which is normal? It'll just be a lot easier to  
12 administer.

13 MS. SPIGEL: Absolutely that's fine, thank you,  
14 Your Honor. That -- Your Honor, it's Robin Spigel. That  
15 change also will need to -- we'll need to make it in the  
16 effective -- the notice of effective date attached to the  
17 order.

18 THE COURT: Okay. You can make conforming changes  
19 to the event.

20 MS. SPIGEL: Okay. Thank you. Do you want her to  
21 -- this is Robin Spigel. Do you want me to walk through  
22 these paragraphs or --

23 THE COURT: Probably helpful.

24 MS. SPIGEL: Okay. With respect to paragraph 30,  
25 the issuer of a surety bond had asked for clarification in

1 the confirmation order that the non-debtor affiliates were  
2 not released from their obligations. And there's nothing in  
3 the plan or the confirmation order that purports to provide  
4 non-consensual third party releases so we included that  
5 language for them.

6 In paragraph 31, as Mr. Binford had noted before,  
7 they wanted it to be clear in the order that they have opted  
8 out of the third party releases in Section 12.7(b) of the  
9 plan. And that obviously is a consensual release so that  
10 wasn't an issue for the Debtor either.

11 In paragraph 32, ERCOT had two general comments to  
12 the plan: one, that it be permitted to amend its claims  
13 without seeking authority of the court, and the second one  
14 is that the Debtor be required to obtain an order of the  
15 Court to estimate ERCOT's claim, both for reserve and  
16 distribution purposes. Since ERCOT's claim is the largest  
17 claim of the estate, other than I think a customer filed a  
18 \$10 billion claim, but putting that aside ERCOT's claim is  
19 the largest claim in the estate, we thought that it made  
20 sense on both of those accounts, one, in connection with its  
21 claims, I believe under its contract it has the ability to  
22 resettle certain amounts so it will probably have an amended  
23 claim, and it would be cost-effective not to have to come  
24 back to the Court to allow it to file its amended claim, as  
25 long as it's in compliance with applicable law, meaning that

1 they're not asserting new claims.

2 And then with respect to the certified, I  
3 explained that one.

4 And then on paragraph 33, counsel for Ms. Prescott  
5 and the alleged punitive class and tort claimants, in  
6 settlement of their plan objections they wanted to ask for a  
7 clarification regarding the lack of estoppel effect of the  
8 orders on parties not released under the plan. I know  
9 Mr. Monsour is on the line as well.

10 THE COURT: I don't have any problem with the  
11 concept. I'm trying to understand what the last sentence  
12 means.

13 MS. SPIGEL: The definition of tort claim.

14 THE COURT: A customer tort claim means a claim  
15 arising in tort for the electricity and related fees, taxes,  
16 expenses and other costs. So it's the words -- I don't have  
17 a problem with what you're doing. I don't understand where  
18 it says: "including when the Public Utilities Commission of  
19 Texas imposes a \$9,000 per megawatt hour price for wholesale  
20 power," if they did that on February 20th, are we including  
21 that date? And let's assume they only did it on February  
22 16th to 19th, are we including February 13th to 15th? Or  
23 should I just take out the including language because it's  
24 really just those dates? And I'm not sure what we're saying  
25 there and I don't want ambiguity. Probably ought to get



1 Mr. Monsour on the phone to be sure that I'm understanding  
2 what the goal is and we get it done. Mr. Monsour, good  
3 afternoon.

4 MR. MONSOUR: Thank you, Your Honor, Trey Monsour  
5 for Karen Prescott. You can take out the language "after  
6 February 19th" because we were just trying to define the  
7 period of time by which the claims would have arisen, which  
8 is between February 13th and February 19th. So the  
9 including when the public utility commission of Texas  
10 imposed a 9,000 per watt, that was within that same  
11 timeframe so it's probably not necessary.

12 THE COURT: And does the Debtor have any problem  
13 with me taking out that language?

14 MS. SPIGEL: No, Your Honor. Thank you.

15 THE COURT: Okay. All right.

16 MR. MONSOUR: Thank you, Your Honor.

17 THE COURT: Thank you. So I am not inclined to  
18 order the plan administrator to preserve and protection the  
19 privileges and work product. What if he determines it's in  
20 his best interest to waive it? I think that what I ought to  
21 be saying here is the plan administrator has the exclusive  
22 authority over all applicable privileges and work product  
23 vested in liquidating Debtor. He can preserve it, he can  
24 protect it, he can waive it. But I think he ought to be  
25 able to do what he deems best. Is there a reason why it

1 shouldn't say that?

2 MS. SPIGEL: No, Your Honor.

3 (Pause)

4 THE COURT: I think the rest of it works for me.

5 And I'm going to take this out. I don't think I  
6 have cause to waive people's appellate rights.

7 I sure don't like that parenthetical. Why are you  
8 asking me to do that? The plan has to control. I can't  
9 authorize a conflicting document to control. What if  
10 there's a conflicting document that says, notwithstanding a  
11 bankruptcy case, the Debtor has to pay? Shouldn't I take  
12 that out?

13 MS. SPIGEL: It's not an issue in this case. It's  
14 fine, thank you, Your Honor.

15 THE COURT: Thank you.

16 (Pause from 4:54 p.m. to 4:55 p.m.)

17 MR. SPIGEL: Your Honor, I noticed --

18 THE COURT: Yes.

19 MS. SPIGEL: -- one knit (phonetic) while we were  
20 scrolling by but I didn't tell you. The liquidation  
21 analysis in paragraph 11 and -- or on page 11 and 12, it's  
22 actually Exhibit B, not Exhibit 2. So apologies for that.

23 THE COURT: Hold on one second.

24 MS. SPIGEL: Sure.

25 (Pause)

1 THE COURT: Sorry. Where do you want me to go?

2 MS. SPIGEL: On page 11 and 12.

3 THE COURT: Okay.

4 MS. SPIGEL: It's paragraph L.

5 THE COURT: Okay.

6 MS. SPIGEL: In two places in the first line it  
7 says: "Exhibit 2." It's actually Exhibit B. And then at  
8 the end of that paragraph it also says "Exhibit 2" but it's  
9 B.

10 THE COURT: Thank you.

11 MS. SPIGEL: Thank you.

12 THE COURT: All right. Let me hear any objections  
13 to the form or the substance of the confirmation order as it  
14 has been edited on the screen.

15 (No audible response)

16 Hearing no objections, I've signed the order.

17 MS. SPIGEL: Thank you, Your Honor.

18 THE COURT: And let me get it to docketing. Hold  
19 on a second. All right. It'll be docketed shortly.

20 Ms. Spigel, it's --

21 MS. SPIGEL: Thank you.

22 THE COURT: -- been a good day for you. What do  
23 you want to do now?

24 MS. SPIGEL: Thank you, Your Honor. What I would  
25 like to do is actually thank you. I wanted to thank the

1 Court for its time and patience and frankly guidance in  
2 respect to this case. As I said ad nauseum, it's a -- it is  
3 a unique plan, and I think it took a lot of thought by all  
4 parties, including Your Honor, to bring it over the finish  
5 line. And we very much appreciate, you know, your time and  
6 thoughts in this case. I think that the plan even  
7 represents an excellent outcome relatively speaking under  
8 the circumstances for all of the parties. And I'm glad that  
9 we were able to get all of the parties to make the  
10 contributions and concessions they were able to make.

11 I also would like to thank Mr. Fallquist and  
12 Mr. Bhullar, who are on the phone. Their efforts as well as  
13 the efforts of their members of management and the board,  
14 they really worked tirelessly to try to make sure that this  
15 company is wound down in the right way. And obviously they  
16 could've put the company in Chapter 7 but they didn't think  
17 that that was appropriate. And so I just wanted to thank  
18 them as well. So thank you.

19 THE COURT: Thank you, Ms. Spigel. I actually  
20 don't think I did very much except let you guys figure out  
21 how to solve this problem. And hopefully I was able to  
22 accommodate your needs in that regard, and you all did.  
23 It's a big problem for the State, big problem for our  
24 citizens. It's important we get it resolved. I appreciate  
25 the hard work that everyone did.

1 Does anyone have anything else that we should  
2 cover today or any other comments that need to be said on  
3 the record? Otherwise I'm going to adjourn and let you go  
4 see your families.

5 MS. SPIGEL: Thank you.

6 MR. GIBBS: Thank you, Judge.

7 THE COURT: Mr. Gibbs, did you have something you  
8 wanted to say?

9 MR. GIBBS: Oh, nothing, Your Honor. I apologize.  
10 I just said thank you.

11 THE COURT: Oh, thank you, sir.

12 All right. We're in adjournment. Thank you.

13 (The parties thank the Court.)

14 (Proceeding adjourned at 4:59 p.m.)

15 \* \* \* \* \*

16 I certify that the foregoing is a correct  
17 transcript to the best of my ability due to the condition of  
18 the electronic sound recording of the ZOOM/telephonic  
19 proceedings in the above-entitled matter.

20 /S/ MARY D. HENRY

21 CERTIFIED BY THE AMERICAN ASSOCIATION OF

22 ELECTRONIC REPORTERS AND TRANSCRIBERS, CET\*\*337

23 JUDICIAL TRANSCRIBERS OF TEXAS, LLC

24 JTT TRANSCRIPT #64241

25 DATE FILED: JULY 9, 2021